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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|---|-------------|------------------------|------------------------------|------------------|
| 10/733,129  | 12/11/2003  | Peter A. Chapman       | MAVERICK 3.0-004<br>CONT CON | 7852             |
| 530 7590 11/13/2008<br>LERNER, DAVID, LITTENBERG,<br>KRUMHOLZ & MENTLIK<br>600 SOUTH AVENUE WEST<br>WESTFIELD, NJ 07090 |             |                        |                              |                  |
| EXAMINER<br>VERBITSKY, GAIL KAPLAN  |             |                        |                              |                  |
| ART UNIT<br>2855  |             | PAPER NUMBER           |                              |                  |
| MAIL DATE<br>11/13/2008   |             | DELIVERY MODE<br>PAPER |                              |                  |

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/733,129  
Filing Date: December 11, 2003  
Appellant(s): CHAPMAN ET AL.

Mr. Cockings

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For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 08/22/2008 appealing from the Office action mailed 02/08/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

|         |                  |         |
|---------|------------------|---------|
| 5939974 | Heagle et al.    | 8-1999  |
| 6065391 | Archard et al.   | 05-2000 |
| 6000845 | Tymkewicz et al. | 12-1999 |

|            |                 |         |
|------------|-----------------|---------|
| 5378874    | Hollings et al. | 01-1995 |
| Des.418069 | Chung et al.    | 12-1999 |
| 4131786    | Cooper          | 12-1978 |
| 6080972    | May             | 06-2000 |

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-5, 8, 10, 12, 14-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle et al. (U.S. 5939974) [hereinafter Heagle] in view of Tymkewicz.

Heagle discloses a device in the field of applicant's endeavor comprising a first hand-held food thermometer/ probe/ data logger/ key pad (first unit/ block 81, Fig. 2, col. 7, line 57) communicating by means of RF with a second unit to transmit cooking parameters. This would imply that the first and the second units have an RF transmitter and an RF receiver respectively. The first unit has an LCD (col. 10, line 28). The second unit is a computer (col. 11, lines 4-15 and col. 17, lines 31-39), thus, inherently, having a microprocessor and a display. The device also has an audible signal generated by a noise-generating unit in the first unit. Although, Heagle is silent so as to having a second LCD, it is very well known in the art, that the majority of the modern computers having LCD. Heagle teaches that the information shown on the display of the first unit is shown on the display of the second unit (abstract).

Heagle does not explicitly teach that the microprocessor is operable to calibrate for a taste preference and a choice preference (beef, chicken, etc., rare, well done,

etc.), that the second unit is a hand held (portable) unit, as stated in claim 1, with the remaining limitations of claims 1, 3-5, 8, 10, 12, 14-15 and 19.

With respect to the second unit/ computer being a hand held (portable) unit: this particular limitation (making the unit hand held/ portable would not render the claims patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected results. See Ranco, Inc. v. Gwynn et al., 128 F.2d 437 [54 USPQ 3].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit disclosed by Heagle, so as to make it portable/ hand-held second unit, in order to allow the second unit to follow the operator and allow the operator to perform other work while waiting for the food being cooked.

Tymkewicz discloses in Fig. 7 a device in the field of applicant's endeavor comprising a microprocessor operative to calibrate (establish temperature setting) for a taste preference (medium, rare, etc.) and a choice preference (beef, poultry, etc.) associated with a food being cooked, establishing temperature, monitoring and displaying on (first) LCD the temperature and taste preferences. The device operates in both, Celsius and Fahrenheit.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the functions of the microcontroller/ microprocessor, disclosed by Heagle, so as to have a microprocessor operative to calibrate, establish a temperature setting (choice and food preference temperature), as

taught by Tymkewicz, in order to have more accurate temperature results of both cooking to a desired temperature and sensing the temperature, and to convey the temperature data to the operator, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit so as to have the display that shows both Fahrenheit and/ or Celsius temperatures, as taught by Tymkewicz, so as to allow the device to be sold/ used in Europe.

Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz, as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of May.

Heagle and Tymkewicz disclose the device stated above.

They do not teach that the second unit having an audible/ noise-generating unit, as stated in claims 6 and 16.

May discloses a device in the field of applicant's endeavor wherein a remote second unit/ personal computer/ hand-held unit having a microprocessor and video and audible/ sound (noise generating) interface.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit disclosed by Heagle and Tymkewicz, so as to have a noise generating unit/ sound interface, as taught by May, in order to attract the operator attention even when the operator not in a close vicinity of neither first nor second unit, so as to enable the operator to take necessary actions.

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Chung et al. (U.S. des.418069).

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach the limitations (the particular curved rigid probe shape) of claims 2 and 13.

Chung discloses a device in the field of applicant's endeavor comprising a first hand-held unit having a curved rigid probe and a flexible cable (communication line). The curved rigid probe has proximal and distal ends and attached to the line by means of a removable plug, a jack adapted to receive the plug, as shown in Fig. 1. The pointed probe end is adapted to be inserted into a food of interest. The device has a display selectively displaying food data/ meat selection/choice (i.e., beef, chicken, etc.), and thus, inherently a processor (microprocessor) operative to calibrate for said meat selection/ choice.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit disclosed by Heagle and Tymkewicz, so as to have the curved rigid probe with a plug and a flexible communication line, as taught by Chung, so as to enable the operator to comfortably insert the probe into the food of interest from any position.

Claims 7, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Cooper (U.S. 4131786).

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach that the second unit is adapted to display time remaining, and that it is having a timer, as stated in claims 7 and 11, 17.

Cooper discloses a device in the field of applicant's endeavor comprising a first unit and a remote control (second) unit 28 having an on/ off, display, cooking temperature and duration control button 24. All data can be entered and seen on either unit. Time duration/ remaining time can be displayed (col. 4, lines 8-14) on both displays, inherently, including the second unit display.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit so as to display a duration/ remaining time on the second unit display, as taught by Cooper, in order to allow the operator to plan their time accordingly.

Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Holling et al. (U.S. 5378874) [hereinafter Holling].

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach the limitations of claims 6, 16.

Holling discloses a device in the field of applicant's endeavor comprising a remote (second) unit having an alarm (noise generating device).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, so as to provide the second unit with an alarm, as taught by Holling, so as to allow the operator to recognize the status of



cooking without instantaneously looking at the display, and without attending the first location.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Archard.

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach the limitations (the first hand-held unit has a noise generating unit) of claim 18.

Archard discloses a device in the field of applicant's endeavor comprising a first hand-held unit displaying taste preferences such as medium, medium rare, rare, well done. The device also has an alarm/ audible signal (noise-generating unit) indicating that the temperature corresponding to the taste preferences (established/ preprogrammed) has been reached.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the alarm/ audible signal, disclosed by Heagle and Tymkewicz, so as to make an audible sound when the established temperature has been reached, as taught by Archard, in order to allow the operator to recognize how the food is being cooked and make necessary changes in the cooking programming, if it is desired.

#### **(10) Response to Argument**

Applicant's arguments with respect to claims 1-8, 10-19 have been considered but they are not persuasive.

Applicant states that Heagle does not teach that a second unit is a hand-held unit. This argument is not persuasive because Heagle teaches that the second unit is a computer. Given the fact that the computers of various sizes have been known in the art (i.e., portable/ laptop, notebook and palm computers) at the time the invention was made, the computers, in the broadest reasonable interpretation, are considered to be hand-held devices since they can be carried by the operator. In addition, the term "computer" lacks any standard definition, but commonly understood by those skilled in the art to encompass, at most fundamental level, device capable of carrying out calculations, and thus prior art reference which discloses calculator meets all the limitations of claim for portable computer, in view of lack, in patent specification, of any specialized definition of "computer" that would restrict it to computer having specific set of characteristics and capabilities. In re Paulsen, CA FC, 8/3/94, p.1671. Therefore, it should be understood, that the term "computer" could be interpreted as a portable/ hand held device.

Applicant states that Tymkewicz does not teach a microprocessor that is calibrating for taste preferences and choice preferences. Applicant states that in Tymkewicz, not the microprocessor but the operator makes a "determination of the status of food substance". Applicant argues that the calibration in Tymkewicz is a manufacturing calibration and not for taste and choice preferences. This argument is not persuasive because, A) the microprocessor of Tymkewicz performs not only calibration that was set up during the manufacturing process (calibration for offset or accuracy), as well known in the art and described in col. 7, lines 25-35), the microprocessor of

Tymkewicz performs calibration for taste (i.e., well done) and choice (i.e., pork) preferences, as described in the text and shown in Fig. 7.

As shown in Fig. 7, the marks corresponding to the desired taste and choice preference ("lamb", "beef", "pork" or "W", "R", "M") would indicate that the device/ microprocessor recognizes data in terms of corresponding temperatures, and thus, that the device has been calibrated for taste and choice preferences.

Applicant states that in Tymkewicz "The user views the analog indication 242 in relation to the indication of the appropriate cooking temperature for a food substance 642 to make an immediate and accurate determination of the cooked status of the food substance". Therefore, in the Applicant's interpretation the operator makes the choice. This argument is not persuasive because the operator makes his decision based on the data shown on the display allowing the operator to see the temperature of the food being cooked and then to recognize the status of the food (i.e., "W") corresponding to said temperature. This is due to the calibration done by the microprocessor (correlating the known temperature to the sign/ mark recognizable for the operator).

Please note that having set up a cooking temperature corresponding to a "well done" command is defined as a calibration or sensing the temperature of the food being cooked and recognizing that the sensed temperature corresponding to state "well done" is also defined and known in the art of metrology as a process of calibration.

With respect to May: applicant states that May does not teach a hand held second unit. This argument is not persuasive because, in the rejection on the merits the Examiner uses May as a secondary reference only for its teaching that a remote second unit has

a microprocessor and video and sound (noise generating) interface". Although the Examiner mentions that May has a computer (which could be portable, see arguments above), this statement has not been used in the rejection, since the primary references, Heagle and Tymkewicz have already taught this limitation.

With respect to Chung and Archard: Applicant states that neither Chung nor Archard disclose a microprocessor. Applicant refers to the Examiner's statement of "inherency" of having a microprocessor in the Chung's rejection. The arguments are not persuasive because in the rejection on the merits, the Examiner uses these two references not for their teaching of the microprocessor, since the combination of Heagle and Tymkewicz has already had this teaching: Archard has been used for it's teaching of an alarm, and Chung has been used for it's teaching that the probe could be of a straight curved shape.

Applicant states that nothing in the Examiner's rejection shows that in 1999 the computers could be carried by hand. This argument is not persuasive because, once again, A) the term "computer" lacks any standard definition, but commonly understood by those skilled in the art to encompass, at most fundamental level, device capable of carrying out calculations, and thus prior art reference which discloses calculator meets all the limitations of claim for portable computer, in view of lack, in patent specification, of any specialized definition of "computer" that would restrict it to computer having specific set of characteristics and capabilities. In re Paulsen, CA FC, 8/3/94, p.1671. Therefore, it should be understood, that the term "computer" could be interpreted as a portable/ hand held device.

B) this particular limitation (making the unit hand held/ portable would not render the claims patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected results. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit disclosed by Heagle, so as to make it portable/ hand-held second unit, in order to allow the operator to carry or move it with him because it is known in the art and desirable to make a device of a small size to be carried around (see, for example, computer games, cell phones, calculators, etc.).

C) portable and thus, hand carried computers have been well known in the art for decades.

The Examiner has thoroughly reviewed the Applicant's arguments with respect to the commercial success of the instant invention. The Examiner finds that the commercial success is pertaining to already patented parent inventions/ applications and not particularly to the claimed invention.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Gail Verbitsky/

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